

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-217517

DATE: July 28, 1986

MATTER OF: Claim for Backpay - False Statement of Interim Earnings

DIGEST:

Employee filed false statement reporting no interim earnings during the period covered by his backpay award. Later, upon being advised that no action would be taken to pay his backpay claim because of his false statement, employee filed an accurate report of his interim earnings. We hold that the employee's backpay claim is tainted by fraud and may not be paid.

This is a request for a decision concerning a claim for backpay by an employee of the Federal Aviation Administration (FAA). We find that the claim for backpay is tainted by fraud because of the claimant's false statement denying any interim earnings. Accordingly, all backpay must be denied.

FACTS

The claimant had been employed as a GS-11 Air Traffic Control Specialist and was removed from that position on February 2, 1980. He filed a grievance challenging his removal under the collective bargaining agreement then in effect between the FAA and the Professional Air Traffic Controllers Organization. His grievance was arbitrated and the arbitrator's award, dated July 29, 1980, ordered his reinstatement with backpay.

In accordance with the award, the claimant was ordered to report for work on August 4, 1980. However, he did not report to work on that date and actually reported on August 11, 1980. He was charged with 1 day annual leave and 4 days leave without pay. The facility chief believed that he had delayed reporting to work because he was employed elsewhere.

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On September 17, 1980, the claimant signed a statement certifying that he received no interim earnings from February 2, 1980, through August 1, 1980. On October 9, 1980, the FAA accounting division requested the agency security personnel to investigate the claimant's statement that he had no interim earnings during the period he was discharged. The preliminary findings were that the claimant had been employed for a salary of \$100 per day.

On January 29, 1981, the matter was referred to the Inspector General of the Department of Transportation for investigation. The agency advises that although the U.S. Attorney declined to prosecute the claimant for criminal charges, the 1983 report of the Inspector General did reflect the fact that the claimant had submitted a false statement concerning his interim earnings.

In June 1984, the accounting division advised the claimant that as a result of his false statement concerning his interim earnings, no action would be taken to pay him any backpay. The claimant then wrote directly to the Secretary of Transportation. His letter was referred to the FAA's Office of the Chief Counsel. That office advised the claimant by letter dated September 6, 1984, that he had apparently failed to report \$2,125 earned during his employment. The letter further advised that when a true and accurate statement of his gross outside earnings was filed with FAA, his backpay would be computed and paid. Upon receipt of this advice from the FAA Office of Chief Counsel, the claimant filed a statement dated September 22, 1984, certifying that his interim gross earnings for the period February 1, 1980, through August 3, 1980, were \$2,125, and requested payment of backpay.

The FAA accounting division subsequently forwarded the case to our Office for resolution. The accounting division believes the claimant is not entitled to any backpay. It cites Comptroller General decisions holding that the fraudulent presentation of a claim vitiates the entire claim. Thus, in the view of the accounting division, the full backpay claim of approximately \$12,000 should be denied because the claimant filed a false statement denying interim earnings.

The claimant, relying upon the September 6, 1984, letter from the FAA Office of Chief Counsel, believes he is entitled to full backpay, less the \$2,125 of interim earnings.

Upon receipt of the agency's request for a decision, we provided the claimant with a copy of the agency's request and advised that he could submit written comments. He did send a short letter denying any and all allegations of any false claim. He asserts he has been " * * * fully cooperative with FAA on all matters and explained to [an agency official] in 1981, the misunderstanding of subchapter 8 Back pay which led to the statement dated Sept. 17, 1980." There is no further explanation of what he told the agency official in 1981 or what misunderstanding occurred with respect to subchapter 8 backpay.

DISCUSSION

The first issue in this case is whether or not the claim for backpay is tainted by fraud. If the claim is not tainted by fraud, the claimant is entitled to backpay less interim earnings of \$2,125. If the claim is tainted by fraud, the second issue is must all backpay be forfeited or only a portion thereof.

As we noted in '57 Comp. Gen. 664; 668 (1978), it is difficult to prescribe exact rules concerning proof of fraud or misrepresentation since the question of whether fraud exists depends on the facts in each case. We recognize that the failure to report interim earnings accurately and promptly should not automatically be equated with fraud. Honest omissions and misunderstanding of the principles governing offsets of interim earnings from backpay awards can occur, and claimants should be given the benefit of the presumption of honesty and fair dealing. B-187975, July 28, 1977; and John V. Lovell, B-215287, September 12, 1985.

In this case, however, the circumstances make it difficult to conclude that an honest misunderstanding accounted for the false report of no interim earnings. The claimant was discharged on February 2, 1980, and was reinstated on August 4, 1980, approximately 6 months later. His reinstatement was fairly prompt and the period of his discharge relatively short. This was not a case where long periods of discharge could account for a lapse in memory about interim earnings. In fact, he filed the false statement on September 17, 1980, a little over a month after he left the interim job. We also note that the amount earned at the interim job was substantial and not likely to be forgotten or overlooked. We note, too, that not until 4 years later, September 22, 1984, did the claimant file an accurate statement of his interim

earnings, and that this statement was filed only after he was informed that his earlier false statement had resulted in suspension of payment of his backpay award. Thus, the claimant's conduct does not support an inference of honest error. As stated in 23 Comp. Gen. 907, 910 (1944), the restatement of a claim in a smaller amount after the Government discovers fraud in the original claim, does not eradicate the taint of fraud.

Finally, we note that on appeal to this Office, the claimant has not offered a satisfactory explanation of these circumstances. He did make a brief reference to a misunderstanding about "subchapter 8" on backpay (presumably subchapter 8 of the Federal Personnel Manual's Supplement 990-2), but the nature of the misunderstanding is not explained or documented, nor is any explanation offered for the 4-year delay in reporting the earnings.

Accordingly, we conclude that this claim for backpay is tainted by fraud.

Since we have concluded that the claim is tainted by fraud, the next issue is whether all backpay or only a portion thereof must be forfeited.

The general rule is that fraud vitiates a claimant's right to the entire claim. 23 Comp. Gen. 907, cited above. If fraud is suspected, the claim should be viewed as one of doubtful validity and should be disallowed, leaving the claimant to pursue the matter in the courts. 44 Comp. Gen. 110, 115-116 (1964).

With respect to claims involving pay and allowances, we have held that each separate item of pay and allowances is to be viewed as a separate claim and the fact that several items may be included in a single voucher does not afford sufficient basis for the conclusion that they have lost their character as separate claims. 41 Comp. Gen. 285, 288 (1964). In 57 Comp. Gen. 664, 667 (1978), we held that a separate claim is one that the employee could claim independently.

In view of the above, the question is, can the period of the backpay claim be viewed as a series of separate claims, or is the entire backpay period considered one claim. We believe backpay must be treated as a single claim. The pay and allowance cases referred to above deal

B-217517

with how to distinguish between the varied types of pay and travel items which may, for administrative convenience, be included on the same voucher. Such items are unrelated or severable. In contrast, backpay is essentially one entitlement arising out of one personnel action. Thus, we have held that the Back Pay Act does not require or contemplate a daily or weekly breakdown of backpay and interim earnings. Rather, the total amount of outside earnings is to be compared to the total amount of backpay. 48 Comp. Gen. 572 (1969); and 55 Comp. Gen. 48 (1975). Accordingly, the entire backpay period is to be treated as one claim. Since, as discussed above, the claim is tainted by fraud, the entire claim is disallowed.

Accordingly, consistent with the above, the claimant must be denied all backpay.

for 
Comptroller General
of the United States